

# *East Longmeadow Zoning Board of Appeals*

*60 Center Square*

*East Longmeadow, Massachusetts 01028*

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*Mark Beglane, chair*

*John Garwacki, vice chair*

*Charles Gray, clerk*

*Brian Hill*

*Michael Carabetta*

*Francis Dean, associate*

*robyn d. macdonald*

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September 8, 2014

Present were: Chair, Mark Beglane; Clerk, Charles Gray, Brian Hill, Francis Dean and Michael Carabetta. John Garwacki was absent.

Public Hearing – Appeal of Decision of Building Inspector re: a building permit for the construction of a new house in violation of rear setback requirements

Mr. Beglane said in order to overturn the Building Inspector's decision the vote would need to be a vote of 4 of 5 or 5 of 5 and then explained the rules of the hearing.

Dan Hellyer, Building Inspector confronted the members and stated they were not eligible to vote because of the dates they were sworn in. Ms. Macdonald assured the members that was not true. Mr. Hellyer asked Mr. Beglane considering that it came from the Planning Board would that be a conflict of interest to have the Chairman of the Planning Board sit on the Zoning Board to make a decision.

Mr. Carabetta said that he was not part of the original vote the night the Planning Board decided to send it to the Board of Appeals. Mr. Hellyer said so you will not vote. Mr. Carabetta said no he would vote. Mr. Hellyer said that the complaint is coming from the Planning Board. Mr. Carabetta said that he was not part of that decision.

Mr. Beglane said that they can question whether or not he would like the Board to get an ethics ruling from the state as to whether or not it is a conflict. Mr. Hellyer said that he would ask for that. Mr. Beglane said that it maybe become moot depending on what the other votes of the parties are. Mr. Hellyer said that is not the consideration and he doesn't believe that Mr. Carabetta can sit on the Board of Appeals and possibly make a decision that he has not already been informed about it. Mr. Beglane said that he understands what he is saying.

Mr. Carabetta said the Town of East Longmeadow has special municipal employee status. He said that an elected official can be on the Board as long as the two did not conflict with each other. Mr. Hellyer said that he feels they do.

Mr. Beglane said that Mr. Hellyer is questioning whether it is a conflict and one of issues they want to address that evening is if the Board wants to go forward since there are only 5 members. Mr. Hellyer said there is a conflict. He said that they can proceed with a 4 member Board and all 4 would have to agree to overturn the decision if Mr.

Carabetta would voluntarily say he is not going to vote, but then he has to decide if he wants to go forward.

Mr. Hellyer said no matter what the decision is that evening he will file with the State Ethics Board regarding Mr. Carabetta's position on the ZBA Board in relation to the complaint coming from the Planning Board. Mr. Beglane said that he understands and that he asked the members who submitted the petition whether they want to proceed with the petition with only 4 members because they can vote with only 4 members. He told Mr. Hellyer that he wanted to give him the option that there is an alternative member who could potentially sit and they could have a 5 member Board instead of a 4 member Board. Mr. Beglane said with a 5 member Board he would have some leeway because one person can vote in favor of the Building Inspector and they could still overturn the Building Inspector. He said in this particular case if 4 of them vote and one of them upholds the Building Inspector's decision the Building Inspectors decision will be upheld even though it was a 3 to 1 vote.

Mr. Kingston said that the hearing hasn't been opened and they are still running on the clock and asked what the time period is. Mr. Beglane said that they have to act within 100 days from when the petition was filed. He said that they have the public hearing within 65 days and they can open the hearing and immediately close it and Mr. Carabetta wouldn't sit on the Board but he doesn't want to proceed where he might feel you are prejudiced because there were only 4 members present. Mr. Kingston asked roughly how many days they are at currently. Ms. Macdonald said July 30<sup>th</sup> was when the appeal was filed with the ZBA.

Mr. Carabetta said in fairness to the Building Inspector and the Planning Board why don't they get a full Board. Ms. Macdonald said that John Garwacki is in Canada and she is not sure of the exact date when he will be back.

Mr. Beglane said that he wants to be fair to everybody in terms of what's there. He doesn't want to have a vote whereby they feel the Board prejudiced them by only having four members and he doesn't want to put him in a spot where you feel he is potentially putting himself up to a ethics violation without getting an ethics ruling. Mr. Hellyer said that there are no personal feelings involved.

Mr. Carabetta said in all fairness to Mr. Hellyer they should get an ethics ruling and get a full Board. That way they are all on a level playing field. Mr. Beglane said right because if they rule he can't rule on it because he has a conflict because it's his Board even though he didn't vote for that. It is his Board and possibly he can't objectively look at it.

Mr. Kingston said they cannot deliberate on that issue that evening because it is not a posted meeting. He said personally he would prefer to have more than needed for an unanimous vote.

Mr. Beglane said that they can continue it and that he will open the hearing and continue it until they can get a full Board maybe in 2 weeks. Ms. Macdonald said that she is not sure how quickly the Ethics Committee will respond. Mr. Beglane said even

without a response Mr. Carabetta says he is not going to sit and if everyone else is available that is a full Board. Mr. Beglane said that he thinks Mr. Carabetta would have to be the one to request a determination from that from the Ethics Committee.

Ms. Macdonald asked the Board if they were available either on the 22<sup>nd</sup> or 29<sup>th</sup>. The Board agreed that the 29<sup>th</sup> would work for everyone.

Mr. Page asked Mr. Beglane about the 100 days is for what. Mr. Beglane said that they have 100 days from when the petition is filed to act. He said if they don't act then the request will be deemed moot unless they get a written extension from the Planning Board.

Clerk, Charles Gray read the legal notice into the record.

Mr. Beglane entertained a motion to continue the Public hearing until September 29, 2014 at 6:00 p.m. Upon motion duly made by Michael Carabetta and seconded by Charles Gray, the Board voted to continue the hearing to September 29, 2014 at 6:00 p.m.

There being no further business the meeting was adjourned at 6:45 p.m.

For the Board

Charles Gray, Clerk